

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 AARON WALKER, an individual;
12 YOLONDA WALKER, an individual,
13
14 Plaintiffs,
15 vs.

16 SPECIALIZED LOAN SERVICING,
17 LLC, a Delaware limited liability
18 company; DEUTSCHE BANK
19 NATIONAL TRUST COMPANY, as
20 TRUSTEE ON BEHALF OF THE
21 HOLDERS OF THE TERWIN
22 MORTGAGE TRUST 2006-9HGA,
23 ASSET-BACKED CERTIFICATES,
24 TMTS SERIES 2006-9HGA, an entity of
25 unknown form; AXIS MORTGAGE &
INVESTMENT, an entity of unknown
form; AXIS MORTGAGE &
INVESTMENTS, LLC, an Arizona
limited liability company; BILTMORE
BANK OF ARIZONA, a banking
institution; CHASE HOME FINANCE
LLC, a Delaware limited liability
company; REGIONAL TRUSTEE
SERVICES CORPORATION, a
Washington corporation; and DOES 1-10,
inclusive,

26 Defendants.
27
28

CASE NO. 08-CV-1411 H (NLS)

**ORDER DENYING WITHOUT
PREJUDICE PLAINTIFFS' EX
PARTE APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND SETTING
BRIEFING SCHEDULE
REGARDING PRELIMINARY
INJUNCTION**

On August 4, 2008, plaintiffs Aaron Walker and Yolonda Walker ("Plaintiffs") filed

1 a complaint alleging violations of federal law, including the Truth in Lending Act, 15 U.S.C.
2 § 1601 et seq., and California law including the Rosenthal Act, Cal. Civ. Code §§ 1788 et seq.
3 Plaintiff has filed an ex parte application for a temporary restraining order (“TRO”) enjoining
4 Defendants from proceeding with a foreclosure sale of Plaintiffs’ property, located in San
5 Diego, California. Plaintiffs assert that the sale is scheduled to occur on August 8, 2008. For
6 the following reasons, the Court denies without prejudice Plaintiffs’ ex parte motion for a
7 TRO.

8 Pursuant to Rule 65(b)(1) of the Federal Rules of Civil Procedure, a court may issue a
9 TRO without notice to the adverse party “only if: (A) specific facts in an affidavit or a verified
10 complaint clearly show that immediate and irreparable injury, loss, or damage will result to the
11 movant before the adverse party can be heard in opposition; and (B) the movant[] certifies in
12 writing any efforts made to give notice and the reasons why it should not be required.”

13 A motion for a TRO also must meet the general requirements for preliminary injunctive
14 relief. “[T]o obtain a preliminary injunction, the moving party must show either (1) a
15 combination of probable success on the merits and the possibility of irreparable injury or
16 (2) that serious questions are raised, and the balance of hardships tips in his favor.” Roe v.
17 Anderson, 134 F.3d 1400, 1402 (9th Cir. 1998). These alternative formulations for the
18 issuance of a preliminary injunction “represent two points on a sliding scale in which the
19 required degree of irreparable harm increases as the probability of success decreases.” Id.;
20 see Clear Channel Outdoor Inc. v. City of Los Angeles, 340 F.3d 810, 813 (9th Cir. 2003).

21 After reviewing Plaintiffs’ complaint and ex parte application for a TRO, the Court
22 concludes that Plaintiffs’ application fails to demonstrate that ex parte injunctive relief is
23 warranted under the law. See Roe v. Anderson, 134 F.3d at 1402. The Court concludes that
24 Plaintiffs fail to demonstrate that preliminary injunctive relief should be granted before the
25 adverse parties can be heard in opposition. See Fed. R. Civ. P. 65(b)(1). Plaintiffs’ complaint
26 arises from a refinance transaction that occurred in July of 2006 for the purpose of paying off
27 existing mortgages, a car loan, and to obtain cash for home improvements. (See Decl. of
28 Yolonda Walker ISO App. for TRO ¶ 4.) Plaintiffs allege that, at the time of the transaction,

1 Defendants represented that Plaintiffs' monthly payment would be \$2,810.86. Plaintiffs allege
2 that in May of 2007 they discovered that the true monthly payment was \$3,183.66. Plaintiffs
3 filed this action more than one year after their discovery of this alleged false representation,
4 and more than three months after foreclosure proceedings were instituted against Plaintiffs'
5 property by the recording of a Notice of Default in the office of the County Recorder. (See
6 Mem. of Pts. & Auths. ISO App. for TRO at 2-3.)

7 After reviewing and carefully considering Plaintiffs' submissions, the Court denies
8 without prejudice Plaintiff's ex parte application for a TRO. Plaintiff shall serve upon all
9 named defendants a copy of Plaintiff's complaint and all other documents filed by Plaintiff in
10 this case. The Court sets the following briefing schedule regarding Plaintiff's request for a
11 preliminary injunction:

- 12 1. Defendant shall file a response in opposition no later than August 15, 2008.
- 13 2. Plaintiff may file a reply no later than August 22, 2008.

14 IT IS SO ORDERED.

15 DATED: August 4, 2008

16 
17 MARILYN L. HUFF, District Judge
18 UNITED STATES DISTRICT COURT
19

20 COPIES TO:
21 All parties of record.
22
23
24
25
26
27
28